



United States District Court
DISTRICT OF MINNESOTA

LR 83.2 FREE PRESS - FAIR TRIAL PROVISIONS

(a) Duty of Counsel. It is the duty of a lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent litigation with which the lawyer or law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(1) *Investigation Stages.* A lawyer participating in or associated with a grand jury or other pending investigation of any criminal matter shall refrain from making any extra-judicial statement which a reasonable person would expect to be disseminated by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or to otherwise aid in the investigation.

(2) *Pretrial Stages.* From the time of an arrest, the issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or the disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of extra-judicial statements which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(A) The prior criminal record (including arrests, indictments or other charges of crime) or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the apprehension of the accused or to warn the public of any dangers the accused may present;

(B) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(C) The performance of any examinations or tests, or the accused's refusal or failure to submit to an examination or test;

(D) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(E) The possibility of a plea of guilty to the offense charged or a lesser offense; and

(F) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting office or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission, or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charge.

(3) *During Trial.* During the trial of any criminal matter including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview relating to the trial or to the parties or issues in the trial, which a reasonable person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer may quote from or refer without comment to public records of the Court in the case.

(4) *Other Proceedings.* Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders; to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies; or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

(b) Duty of Courthouse Supporting Personnel. All courthouse supporting personnel -- including, among others, marshals, deputy marshals, court clerks, bailiffs, and court reporters and employees or subcontractors retained by court-appointed official reporters -- are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not a part of the public records of the Court. The divulgence of information concerning grand jury proceedings, arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(c) Special Order of the Court. In a widely publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extra-judicial statements by parties and witnesses which are likely to interfere with the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the Court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all of the following subjects:

- (1) A proscription of extra-judicial statements by participants in the trial, including lawyers, parties, witnesses, jurors, and court officials which might divulge prejudicial matter not of public record in the case;
- (2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial so as to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom and courthouse and during the recesses in the trial;
- (3) Specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations;
- (4) Sequestration of the jury on motion of either party or the Court, without disclosure of the identity of the movant;
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court;
- (6) Insulation of witnesses from news interviews during the trial period; and

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(A) An order that no member of the public or news media representative be at any time permitted within the bar railing; and

(B) The allocation of seats to news media representatives in cases where there is an excess of requests, taking into account any pooling arrangements that may have been agreed to among the news media personnel.

The above list of subjects is not intended to be exhaustive, but is merely illustrative of subject matters which might appropriately be dealt with in such an order. However, special orders which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case are inappropriate and nothing in this rule authorizes such an order.

(d) Closure of Pretrial Proceedings. Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part, on the grounds:

(1) That there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and

(2) That reasonable alternatives to closure will not adequately protect defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

(e) Photographic and Recording Equipment. No cameras, whether film, video, or any other photographic means, shall be permitted in the courthouse, except that a Judge of this Court may authorize still or video photography of a ceremonial procedure in the courthouse.

Sound recording devices, including telephonic devices, such as pagers and other receiving, transmitting or enhancement devices, may be brought into the courthouse, but must be inoperative and unobtrusive at all times they are in a courtroom or in any adjacent area where their operation could be disruptive to any judicial business or proceeding.

The U.S. Marshal or designee court security officers are authorized to exclude from any courtroom, prohibit from the courthouse, or confiscate any devices the officer has reason to believe violates this rule.

All electronic devices shall be subject to visual and/or electronic inspection by the U.S. Marshal or designee court security officers at any time, and such inspection may include a required demonstration by the person in possession that it is functional.

[Adopted effective February 1, 1991; amended November 1, 1996]